

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST
LITIGATION

Civil No. 18-cv-1776 (JRT/HB)

**DEFENDANTS' UPDATE LETTER
REGARDING DISCOVERY**

This Document Relates to:

All ACTIONS

Pursuant to the Court's orders at ECF Nos. 686 and 734, the Defendants, by and through their undersigned counsel, provide the following update regarding discovery.

It is Defendants' position that there are no discovery disputes that require the Court's attention at this time. The parties have been working collaboratively on a range of discovery topics, the parties are complying with their obligations under the Court's orders, and discovery is well underway. Plaintiffs have not notified Defendants of, or met and conferred regarding, any brewing discovery disputes that would soon require the Court's attention.

Defendants now provide their update on the five specific topics the parties identified in their agenda on Monday, March 15, as well as an update on discovery negotiations in the Winn-Dixie case.¹

¹ Counsel for Defendants alerted lead counsel for the Winn-Dixie plaintiffs of this addition to this Update, and he had no objection.

I. Search Methodology and the Use of TAR

After extensive negotiations, the parties have largely reached agreement on the search terms that each party will use in searching for responsive, relevant documents. During these talks, certain Defendants disclosed that they will use TAR as part of their review and provided information on the TAR process they anticipate using. At this time, Defendants are not aware of any disputes over search terms, search methodology, or the use of TAR that will require the Court's attention.

II. Structured Data

The parties continue to discuss the production of structured data. Defendants have provided extensive information about the transaction data that exists and is reasonably accessible, and Defendants have provided or will soon provide to Plaintiffs either samples of their transaction data or a list of fields of data from each potentially relevant database.

More specifically, the parties continue to talk about two issues that will affect the scope of eventual structured-data productions – the relevant date range and the pork products that are considered relevant to the Plaintiffs' conspiracy allegations. Pursuant to the many extensions of time the Court has granted (most recently in ECF No. 729), the parties will continue these negotiations and then report to the Court on March 29 as to whether they could reach agreement on the scope of structured-data productions. At this time, Defendants are not aware of any disputes over structured data that will require the Court's attention.

III. Defendants' Calendar Entries

Plaintiffs moved to compel Defendants to produce every page of every calendar for every document custodian regardless of relevance (except for narrow redactions for things like doctor's appointments). The parties submitted briefing on this issue. On January 8, 2021, the Court heard argument on Plaintiffs' motion to compel and denied it, while also ordering the parties to meet and confer on ways to determine the relevance and responsiveness of calendar entries and the means of review. ECF No. 624. Plaintiffs recently sent Defendants a letter proposing certain procedures regarding responsiveness and the means of review, which Defendants are considering. Defendants will meet and confer with Plaintiffs pursuant to the Court's order before reviewing and producing calendar entries. Plaintiffs have not raised any disputes with Defendants regarding the production of calendar entries since the Court's January 8 ruling. Therefore, at this time, Defendants are not aware of any disputes over their future production of calendar entries that will require the Court's attention.

IV. Puerto Rico's Initial Disclosures and Discovery Responses

Counsel for Puerto Rico and Defendants have met and conferred several times regarding Puerto Rico's initial disclosures and discovery responses. Together, counsel have reached an agreement to extend Puerto Rico's deadline to provide complete initial disclosures to March 19, 2021 and Puerto Rico's deadline to provide responses to Interrogatories and Requests for Production between April 2, 2021 and April 9, 2021.

Counsel intend to schedule another meet and confer for April 12, 2021 to discuss outstanding discovery issues, if any remain at that time.

V. Winn-Dixie's and Bi-Lo's Initial Disclosures and Discovery Responses

Counsel for Winn-Dixie and Bi-Lo and Defendants have communicated about Winn-Dixie's and Bi-Lo's initial disclosures and proposed document custodians. Additionally, Defendants have served, and Winn-Dixie and Bi-Lo have recently responded to, Defendants' First Request for Document Production. The parties have also begun to discuss the search terms to be used in searching for responsive, relevant documents and will continue to do so in the near future.

VI. Status of Third-Party Document Productions

The Court's Pretrial Scheduling Order adopted the parties' agreement that they will "exchange all third party productions within 14 days of receipt of the productions." ECF No. 658 at 8. Plaintiffs have received document productions from several third parties, but at first, they did not produce all such documents to Defendants within the time period required by the Court's Order. After Defendants inquired, Plaintiffs provided Defendants with copies of third-party productions and represented that they have now sent to Defendants all third-party productions that they have received to date. Plaintiffs further confirmed that, going forward, they will comply with the 14-day deadline in the Scheduling Order. Defendants have not yet received any documents from third parties, but Defendants confirm that, when the time comes, they will comply with the 14-day deadline in the Scheduling Order. At this time, Defendants are not aware of any disputes over third-party document productions that will require the Court's attention.

Dated: March 18, 2021

/s/ Mark L. Johnson

Mark L. Johnson (#0345520)
Virginia R. McCalmont (#0399496)
GREENE ESPEL PLLP
222 South Ninth Street, Suite 2200
Minneapolis, MN 55402
(612) 373-0830
mjohnson@greeneespel.com
vmccalmont@greeneespel.com

Daniel Laytin, P.C. (*pro hac vice*)
Christa Cottrell, P.C. (*pro hac vice*)
Christina Briesacher (*pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312) 861-2000
daniel.laytin@kirkland.com
christa.cottrell@kirkland.com
christina.briesacher@kirkland.com

***Counsel for Clemens Food Group, LLC
and The Clemens Family Corporation***

/s/ Richard A. Duncan

Richard A. Duncan (#0192983)
Aaron D. Van Oort (#0315539)
Craig S. Coleman (#0325491)
Emily E. Chow (#0388239)
Isaac B. Hall (#0395398)
Bryan K. Washburn (#0397733)
FAEGRE DRINKER BIDDLE &
REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000
richard.duncan@faegredrinker.com
aaron.vanoort@faegredrinker.com
craig.coleman@faegredrinker.com
emily.chow@faegredrinker.com
isaac.hall@faegredrinker.com
bryan.washburn@faegredrinker.com

***Counsel for Hormel Foods Corporation
and Hormel Foods, LLC***

s/ Donald G. Heeman

Donald G. Heeman (#0286023)
Jessica J. Nelson (#0347358)
Randi J. Winter (#0391354)
SPENCER FANE LLP
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 268-7000
dheeman@spencerfane.com
jnelson@spencerfane.com
rwinter@spencerfane.com

Stephen R. Neuwirth (*pro hac vice*)
Michael B. Carlinsky (*pro hac vice*)
Sami H. Rashid (*pro hac vice*)
Richard T. Vagas (*pro hac vice*)
David B. Adler (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
stephenneuwirth@quinnemanuel.com
michaelcarlinsky@quinnemanuel.com
samirashid@quinnemanuel.com
richardvagas@quinnemanuel.com
davidadler@quinnemanuel.com

Counsel for JBS USA Food Company

/s/ William L. Greene

William L. Greene (#0198730)
Peter J. Schwingler (#0388909)
Jon M. Woodruff (#0399453)
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
(612) 335-1500
william.greene@stinson.com
peter.schwingler@stinson.com
john.woodruff@stinson.com

J. Nicci Warr (*pro hac vice*)
STINSON LLP
7700 Forsyth Blvd., Suite 1100
St. Louis, MO 63105
(314) 863-0800
nicci.warr@stinson.com

Counsel for Seaboard Foods LLC

/s/ Brian Robison

John A. Cotter (#0134296)
John A. Kvinge (#0392303)
LARKIN HOFFMAN DALY &
LINDGREN LTD.
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55427-1060
(952) 835-3800
jcotter@larkinhoffman.com
jckvinge@larkinhoffman.com

Richard Parker (*pro hac vice*)
Josh Lipton (*pro hac vice*)
GIBSON, DUNN & CRUTCHER, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500
rparker@gibsondunn.com
jlipton@gibsondunn.com

Brian Robison (*pro hac vice*)
GIBSON, DUNN & CRUTCHER, LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-6912
(214) 698-3370
brobison@gibsondunn.com

Counsel for Smithfield Foods, Inc.

/s/ Aaron Chapin

Gene Summerlin (*pro hac vice*)
Aaron Chapin (#06292540)
Marnie Jensen (*pro hac vice*)
Ryann Glenn (*pro hac vice*)
Kamron Hasan (*pro hac vice*)
Sierra Faler (*pro hac vice*)
HUSCH BLACKWELL LLP
13330 California St., Suite 200
Omaha, NE 68154
(402) 964-5000
gene.summerlin@huschblackwell.com
marnie.jensen@huschblackwell.com
ryann.glenn@huschblackwell.com
kamron.hasan@huschblackwell.com
sierra.faler@huschblackwell.com

Counsel for Triumph Foods, LLC

/s/ David P. Graham

David P. Graham
DYKEMA GOSSETT PLLC
90 S 7th Street, FL 2
Minneapolis, MN 55402
Telephone: 612-486-1521
dgraham@dykema.com

Rachel Adcox (*pro hac vice*)
Tiffany Rider (*pro hac vice*)
AXINN, VELTROP & HARKRIDER
LLP
950 F. Street, NW
Washington, DC 20004
Telephone: 202.912.4700
radcox@axinn.com
trider@axinn.com

Jarod Taylor (*pro hac vice pending*)
AXINN, VELTROP & HARKRIDER
LLP
90 State House Square
Hartford, CT 06103
Telephone: 860.275.8109
jtaylor@axinn.com

***Counsel for Tyson Foods, Inc.,
Tyson Fresh Meats, Inc., and Tyson
Prepared Foods, Inc.***

/s/ Peter H. Walsh

Peter H. Walsh (#0388672)
HOGAN LOVELLS US LLP
80 South Eighth Street, Suite 1225
Minneapolis, MN 55402
T. (612) 402-3000
F. (612) 402-3001
peter.walsh@hoganlovells.com

William L. Monts (*pro hac vice*)
Justin W. Bernick (*pro hac vice*)
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600
william.monts@hoganlovells.com
justin.bernick@hoganlovells.com

Counsel for Agri Stats, Inc.